

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 91-617-C - ORDER NO. 92-213 ✓  
MARCH 24, 1992

IN RE: Application of NOS Communications, Inc. ) ORDER  
for a Certificate of Public Convenience ) GRANTING  
and Necessity to Operate as a Reseller ) CERTIFICATE  
of Telecommunications Services within )  
the State of South Carolina. )

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of NOS Communications, Inc. (NOS or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. NOS' Application was filed pursuant to S.C. Code Ann. §58-9-280 (1976) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed NOS to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of NOS' Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. NOS complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by

Southern Bell Telephone & Telegraph Company (Southern Bell) and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on February 25, 1992, at 11:00 a.m. in the Commission's Hearing Room. The Honorable Marjorie Amos-Frazier, Chairman, presided. Reese Williams, Esquire, and Charles H. Helein, Esquire, represented NOS. Caroline N. Watson, Esquire, represented Southern Bell; Elliott F. Elam, Jr., Esquire, represented the Consumer Advocate; and Gayle B. Nichols, Staff Counsel, represented the Commission Staff.

#### FINDINGS OF FACT

1. NOS is a privately-held corporation incorporated in the State of Maryland. NOS is a switchless reseller which provides interstate, interexchange long distance telephone service. It offers intrastate interexchange telecommunications services on a resold basis by obtaining volume discounted services from facility-based carriers. NOS seeks a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange services on an interLATA basis within the State of South Carolina. Application.

2. NOS presented the testimony of Larry Orlov, Vice-President of Company. Mr. Orlov testified that NOS' underlying carrier is AT&T and that the Company planned to resell AT&T's Software Defined Network (SDN) and Distributed Network Services (DNS). Mr. Orlov explained NOS did not intend to carry intraLATA traffic. He testified NOS would provide access only

through use of Feature Group D so that local exchange carriers would be able to default or block intraLATA traffic. Mr. Orlov admitted that NOS had completed intrastate (South Carolina) calls prior to receiving certification.

3. Mr. Orlov testified that NOS does not intend to offer operator services or payphone services.

4. Mr. Orlov testified that NOS is authorized to provide intrastate resale services in Texas, Minnesota, North Carolina, New York, and Florida. He testified NOS provides intrastate services in Colorado, Michigan, Ohio, Oklahoma, Tennessee, and Utah. He explained that these states do not require certification for resellers.

5. Mr. Orlov testified that NOS would provide South Carolina consumers with a competitive long distance price and that by lowering the costs of telecommunications, smaller businesses would be able to maintain their communications costs at levels that are equivalent to very large long distance users.

6. According to its Application, NOS has net worth of approximately \$757,870. NOS agreed to abide by all Commission regulations and orders regarding its rates and service.

7. At the beginning of the hearing, Southern Bell placed a stipulation between itself and NOS in the record. According to this stipulation, Southern Bell asserted that it was its position that the resale of SDN and DNS was not authorized in South Carolina. However, Southern Bell agreed not to oppose NOS' Application if the Company agreed that its customers would obtain

access through exclusive use of Feature Group D, that it would not utilize "1+" & "700" services, that it would educate its customers as to the prohibition of intraLATA calls, that any grant of authority would be solely for interLATA service, and that if any intraLATA calls were completed, NOS would assure that the local exchange company would be reimbursed pursuant to Order No. 86-793 in Docket No. 86-187-C. As part of the stipulation, the pre-filed testimony of Southern Bell's witness, C.L. Addis, was placed into the record, subject to certain objections of NOS. After placing the stipulation on record, Southern Bell withdrew its participation in the hearing.

8. Mr. Addis testified that Southern Bell did not oppose the resale of SDN on an interLATA basis but that it was concerned about the completion of intraLATA calls over SDN. NOS objected to various portions of Mr. Addis' testimony on the grounds of irrelevance, mischaracterization of the Application, and speculation.

#### CONCLUSIONS OF LAW

1. The Commission concludes that NOS has the experience, capability, and financial resources to provide the service described in its Application and by Mr. Orlov's testimony.

2. The Commission concludes that South Carolina telephone users and the State itself will benefit by the services intended to be provided by NOS. Accordingly, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to NOS to provide intrastate, interLATA service through the resale

of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs of facility-based carriers approved by the Commission.

3. The Commission recognizes that NOS has specifically agreed to limit its request to authority to the resell of intrastate interLATA service and, accordingly, its authority is solely limited to this purpose. In order to prevent the unauthorized transmittal of intraLATA long distance traffic, NOS shall be required to provide its customers with access by use of Feature Group D Switched Access. Should NOS complete any unauthorized intrastate intraLATA calls then the Company will be required to compensate the local exchange companies for the unauthorized calls it carries pursuant to Commission Order No. 86-793 in Docket No. 86-187-C.

4. The Commission adopts a rate design for NOS for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communication Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). The Commission adopts NOS' proposed maximum rate tariffs.

5. NOS shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. NOS shall file its proposed rate changes, publish its notice of such

changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of NOS' subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1991).

6. NOS shall file its tariff and an accompanying price list in a loose leaf binder to reflect the Commission's findings within thirty (30) days of the date of this Order. NOS' provisions regarding advance payments and deposits shall comply with 26 S.C. Regs. 103-621 (Supp. 1991).

7. NOS is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to NOS' resale of services, an end user should be able to access another interexchange carrier or operator service provider if they so desire.

9. NOS shall resell the services of only those interexchange carriers or LEC's authorized to do business in South Carolina by this Commission. If NOS changes underlying carriers, it shall notify the Commission in writing.

10. NOS shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports

is indicated on Attachment A.


11. The Commission concludes it is unnecessary to rule on NOS' objections to Mr. Addis' testimony. In as much as Southern Bell agreed not to oppose NOS' Application so long as the grant of authority met the terms of the parties' stipulation, the Commission has not relied on Mr. Addis' testimony.

12. Within thirty (30) days from the date of this Order NOS shall refund to its customers any and all charges collected for intrastate calls completed prior to the date of this Order. All refunds shall include interest at the rate of 12% annum.


13. Any portions of Southern Bell and NOS' stipulation not specifically addressed by this Order are hereby incorporated into this Order.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director  
(SEAL)

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS  
FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS\* FOR 12 MONTHS  
ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

\*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,  
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN  
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF  
CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE\* AT DECEMBER 31 OR FISCAL YEAR ENDING  
\_\_\_\_\_.

\*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION  
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND  
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE  
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL  
AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3  
ABOVE).